

will serve as a marvelous and distinguished Associate Justice of the Supreme Court of the United States. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Judge Barry.

We turn now to Judge Ruggero Aldisert. He has a bachelor's degree from the University of Pittsburgh in 1942 and a law degree from the same institution in 1947, with intervening service in the Marine Corps. He served on the Court of Common Pleas of Allegheny County from 1961 to 1968, at which point he was appointed to the Third Circuit by President Lyndon Johnson. Judge Aldisert and I were reminiscing about my predecessor, Judge—Senator—he used to be a judge—Senator Joe Clark, whose seat I now occupy. He was Chief Judge from 1984 to 1986 and took senior status in 1986. He has been an adjunct professor at the University of Pittsburgh and has served with Judge Alito on the Third Circuit for the past 15 years.

Thank you for coming all the way from California, Judge Aldisert, to be with us today and we look forward to your testimony.

STATEMENT OF RUGGERO J. ALDISERT, SENIOR JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, PHILADELPHIA, PENNSYLVANIA

Judge ALDISERT. Thank you, sir. Mr. Chairman and members of the Committee, I thank you for this invitation to offer my views on my colleague, but before proceeding into my formal statement, I want the record to show that there was a discussion this morning about ages of judges. Well, I am an old man.

[Laughter.]

Judge ALDISERT. And I will tell you how old I am. There is a certain distinguished United States Senator sitting up there who I swore in as a lawyer in the city of Pittsburgh over 40 years ago, and that is Orrin Hatch.

[Laughter.]

Judge ALDISERT. And I will also say that I presided over the first jury trial that he ever tried, and he won the case.

Senator LEAHY. Oh, that is sweet.

[Laughter.]

Senator HATCH. I am glad you said that, Judge. They don't believe that I did.

Senator LEAHY. I never knew you won one.

[Laughter.]

Chairman SPECTER. They have always gotten along very well together, Senator Leahy and Senator Hatch.

Judge ALDISERT. When I first testified before this Committee in 1968, I was seeking confirmation in my own nomination to the Federal Circuit Court. I speak now as the most senior judge on the Third Circuit, and I begin my brief testimony with some personal background.

In May 1960, I campaigned with John F. Kennedy in the critical Presidential primaries of West Virginia. The next year, I ran for judge, as was indicated, and I was on the Democratic ticket, and I served 8 years as a State trial judge. As the Chairman indicated, Senator Joseph Clark of Pennsylvania was my chief sponsor when

President Lyndon Johnson nominated me to the Court of Appeals, and Senator Robert F. Kennedy from New York was one of my key supporters.

Now, why do I say this? I make this as a point that political loyalties become irrelevant when I became a judge. The same has been true in the case of Judge Alito, who served honorably in two Republican administrations before he was appointed to our court. Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

I have been a judge for 45 of my 86 years, and based on my experience, I can represent to this Committee that Judge Alito has to be included among the first rank of the 44 judges with whom I have served on the Third Circuit, and including another 50 judges on five other courts of appeals on which I have sat since taking senior status.

Moreover, I have been a longtime student of the judicial process. I have written four books on the subject and more than 30 law review articles, and this study required me to study the current work of 22 Justices of the U.S. Supreme Court, and I have read hundreds of opinions of appellate judges of every Federal circuit, every State, and every political stripe. The great Cardozo taught us long ago, the judge even when he is free is not wholly free. He is not to innovate at pleasure. This means that the crucial values of predictability, reliance, and fundamental fairness must be honored, and as his judicial record makes plain, Judge Alito has taken this teaching to heart. He believes that legal outcomes will follow the law as dictated by the facts of the particular case, whether the facts involve commercial interests, government regulation, or intimate relationships.

According to these criteria, Mr. Chairman, Judge Alito is already a great judge. We who have heard his probing questions during oral arguments, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decisionmaking and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great Justice.

If Judge Alito is confirmed, as I believe wholeheartedly he deserves to be, he will succeed a Justice who has gained a reputation as a practical Justice, whose resistance to ideologically driven solutions has positioned her as a swing vote on the Court. And as has been heard several times in this hearing, Justice O'Connor in 1995 described her approach to judging. What she said then is even more important today, and I quote: "It cannot be too often stated that the greatest threats to our constitutional freedoms come in times of crisis...The only way for judges to mediate these conflicting impulses is to do what they should do anyway: stay close to the record in each case that appears before them and make their judgments based on that alone." And knowing Sam Alito as I do, I am struck by how accurately these words also describe the way in which he has performed his work as a United States circuit judge. That is why, with utmost enthusiasm, I recommend that he be confirmed as an Associate Justice on the Supreme Court.

Thank you, Mr. Chairman.

[The prepared statement of Judge Aldisert appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Judge Aldisert.

We now turn to Judge Leonard Garth, who is coming to us—you see him on the television screen, coming to us from California. Judge Garth is a graduate of Columbia, 1942, served in the United States Army, Lieutenant, from 1943 to 1945, and then from the Harvard Law School where he graduated in 1952. In 1969, he was appointed to the district court by President Nixon and then to the circuit court by President Nixon in 1973, a lecturer at Rutgers Law School and the Seton Law Hall School; has known Judge Alito since Judge Alito clerked for Judge Garth back in 1976 and 1977 and has served with him on the Third Circuit for the 15 years of Judge Alito's tenure there.

Judge Garth, we very much appreciate your being with us, and we look forward to your testimony.

STATEMENT OF LEONARD I. GARTH, SENIOR JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, CHICAGO, ILLINOIS

Judge GARTH. Thank you, Senator Specter, Senator Leahy, and the honorable members of the Senate Judiciary Committee, and, of course, my own family of judges who have preceded me in speaking to you today.

I, too, am privileged to appear before you today, albeit by videoconferencing rather than in person. I cannot be with you in person because I recently had some major spinal surgery, and I find it extremely difficult and painful to travel.

As Senator Specter has indicated, I have served as a Federal judge for some 36 years: as a district court judge in New Jersey, and since August 1973 as a member of the Third Circuit Court of Appeals.

Now, I do want to interject and say that in that respect, perhaps Judge Aldisert is older than I am, but not by many days. And I am almost as old as he is, but not quite as handsome as Judge Barry of my court.

[Laughter.]

Judge GARTH. I hope you will forgive that aside, but I want to ask you for something else to forgive me. I have heard all of my colleagues speak so eloquently and, I will use the term that Judge Barry used, glowingly about Judge Alito. But I have known him just a little bit longer and in a different capacity over the course of his career.

Following his graduation from law school, he served as one of my two law clerks in 1976 and 1977. And as you have heard, since 1990 he has served as my colleague on the court of appeals. During the interim years, because of the relationship that we developed during his clerkship and the fact that both he and I are New Jersey residents, we remained close to one another. Hence, I think I can speak knowledgeably about Sam's qualifications, his talents, his discretion, his honesty, his fairness, and his integrity. These are qualities that Judge Alito possesses now and has possessed since the very beginning of his legal career.